

STATE OF VERMONT  
PUBLIC SERVICE BOARD

Docket No. 7590

Petition of Green Mountain Power Corporation     )  
for a Certificate of Public Good approving the     )  
purchase of electricity pursuant to a Power     )  
Purchase Agreement with Granite Reliable Power,     )  
LLC     )

Order entered: 2/23/2010

**PROTECTIVE ORDER REGARDING GMP PREFILED TESTIMONY**

**I. INTRODUCTION**

On January 15, 2010, Green Mountain Power Corporation ("GMP") filed a Motion for Confidential Treatment of Prefiled Evidence concerning a portion of the prefiled testimony and one exhibit of GMP witness Douglas Smith. The information includes the specific price and certain other material terms of the Power Purchase Agreement that is the subject of this proceeding. GMP argues that the redacted passages contain information that is competitively sensitive and which they are contractually required to keep confidential, and which should be maintained as confidential. GMP submitted an averment to support its request for confidentiality.

No party opposed GMP's motion or filed comment.

**II. DISCUSSION**

I have reviewed the motion and supporting materials, and I conclude that GMP has made a *prima facie* showing that confidential treatment is warranted for the information at issue. Therefore, I hereby grant GMP's motion for a protective order.

To promote full public understanding of the basis for its decisions, the Board has actively taken steps to limit the amount of information subject to protective orders. It has encouraged parties to remove material from that protection to the extent possible. Since 2001, it has required petitioners seeking a protective order to submit a document-specific (or information-specific)

avermment of the basis for keeping confidential any document (or information) that they wish to be kept under seal. This arrangement appropriately places a heavy burden on the party seeking confidentiality to justify that decision. It also ensures that counsel for the party seeking confidentiality has actually reviewed and considered the relevant confidentiality factors, as they relate to the specific document or information at issue.<sup>1</sup> Generally, however, the Board only resolves disputes about information when there is a genuine disagreement about its confidential nature.<sup>2</sup>

In determining whether to protect confidential information, the Board considers three issues:

- (1) Is the matter sought to be protected a trade secret or other confidential research, development, or commercial information which should be protected?
- (2) Would disclosure of such information cause a cognizable harm sufficient to warrant a protective order?
- (3) Has the party seeking protection shown "good cause" for invoking the board's protection?<sup>3</sup>

GMP argues that the price and other material terms of the Purchase Power Agreement were negotiated between the parties to that agreement with the expectation that they would remain confidential, and that GMP is contractually required to keep the redacted information confidential. GMP asserts that the information is competitively sensitive and "contains information concerning the bargaining positions of all agreement parties." According to GMP, disclosure of the identified information "will make it more difficult to negotiate such agreements in the future, and could disadvantage GMP in its negotiations with other potential suppliers."<sup>4</sup> Because no party filed any comment or noted any disagreement with GMP's statements, I accept GMP's averment as true.

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1. *Investigation into General Order No. 45 Notice filed by Vermont Yankee Nuclear Power Corporation re: proposed sale of Vermont Yankee Nuclear Power Station to Entergy Nuclear Vermont Yankee, LLC*, Docket No. 6545 ("Entergy Docket"), Order of 11/9/01 at 5-6.

2. *Id.* at 6.

3. *See, e.g., Entergy Docket*, Order of 3/29/02 at 2.

4. GMP Averment No. 1 at 1-2.

I have reviewed the motion and supporting materials, and I have applied the existing standard. I conclude that the redacted information is commercial information that should be protected, that disclosure would cause a cognizable harm sufficient to warrant a protective order, and that there is good cause for protecting the information. Therefore, GMP has made a *prima facie* showing that confidential treatment is warranted for the information at issue, and I grant GMP's motion for a protective order.

In addition, the Board has consistently reminded parties who seek confidential treatment for materials that they have a continuing obligation to reexamine protected information and to release material that would not cause competitive harm, or that has otherwise been made public (even during the course of this proceeding), particularly testimony and exhibits. I expect GMP to do the same here.

At this time, I am not explicitly ruling that any specific information should remain confidential for the life of the Power Purchase Agreement as requested by GMP. Parties retain the ability to challenge whether information encompassed by this ruling should be removed from the special protections we adopt in this Order or removed completely from protection as confidential information.

### **III. ORDER**

Therefore, IT IS HEREBY ORDERED that the Confidential Information provided by GMP (as set out in an attachment to this Order) shall be treated in this proceeding as follows:

1. All testimony, affidavits, transcripts, exhibits, and other documents that are subject to this Order as confidential information, and any documents that discuss or reveal documents that constitute confidential material, shall be placed in a sealed record by filing such information in sealed envelopes or other appropriate sealed containers on which shall be endorsed the caption and docket number of the proceeding, the nature of the content (*e.g.*, exhibit, report, etc.), and a statement that it shall not be opened or released from the custody of the Clerk of the Board except by Order of the Board. Notwithstanding such a statement, the members of the Board, any employee or consultant specifically authorized by the Board to assist the Board in this

proceeding, and any Hearing Officer appointed to this Docket may have access to such sealed confidential information, but shall not disclose such information to any person.

2. At hearing or conference in this proceeding, no persons, other than those who have signed or agreed to be bound by this Order and the Protective Agreement approved in the Order of February 23, 2010, and those whom the Board has expressly authorized to have access to this confidential information, shall be permitted to give, hear or review testimony given or held with respect to this confidential information.

3. Each Board stenographer or reporter in this proceeding shall acknowledge and be bound by this Order. Each such Board stenographer or reporter shall be instructed to and shall start a separate transcription for testimony or discussion on the record of confidential information. Such transcription shall be marked "Confidential" and shall be sealed and filed with the Clerk of the Board, and copies of the same shall be made available only to those persons authorized to view such information. Such transcription shall, in all other respects, be treated as confidential information pursuant to this Order.

4. The Board retains jurisdiction to make such amendment, modifications and additions to this Order as it may, from time to time, deem appropriate, including any such amendments, modifications or additions resulting from a motion made pursuant to the Protective Agreement. Any party or other person may apply to the Board for an amendment, modification or addition of this Order.

Dated at Montpelier, Vermont, this 23<sup>rd</sup> day of February, 2010.

s/Ann Bishop  
Ann Bishop  
Hearing Officer

OFFICE OF THE CLERK

FILED: February 23, 2010

ATTEST: s/Susan M. Hudson  
Clerk of the Board

*NOTICE TO READERS: This decision is subject to revision of technical errors. Readers are requested to notify the Clerk of the Board (by e-mail, telephone, or in writing) of any apparent errors, in order that any necessary corrections may be made. (E-mail address: psb.clerk@state.vt.us)*